100TH CONGRESS
2d Session

SENATE

TREATY DOC.
100–21

PROTOCOL TO THE 1967 TAX CONVENTION WITH FRANCE

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE PROTOCOL OF JUNE 16, 1988, TOGETHER WITH A RELATED EXCHANGE OF NOTES, TO THE CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE FRENCH REPUBLIC WITH RESPECT TO TAXES ON INCOME AND PROPERTY OF JULY 28, 1967, AS AMENDED BY THE PROTOCOLS OF OCTOBER 12, 1970, NOVEMBER 24, 1978 AND JANUARY 17, 1984

AUGUST 1, 1988.—Protocol was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE

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S385-12

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *August 1, 1988.*

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, the Protocol to the Convention between the United States of America and the French Republic with respect to Taxes on Income and Property of July 28, 1967, as amended by the Protocols of October 12, 1970, November 24, 1978, and January 17, 1984, which Protocol and related exchange of notes were signed at Paris on June 16, 1988. I also transmit for the information of the Senate the report of the Department of State with respect thereto.

The main purpose of the Protocol is to modify the Convention to take into account the provisions of the Tax Reform Act of 1986. In addition, the Protocol will permit France to exempt U.S. citizens resident in France from French tax on their U.S.-source investment income.

It is most desirable that this Protocol, together with the related exchange of notes, be considered by the Senate as soon as possible and that the Senate give advice and consent to ratification.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, July 25, 1988.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Protocol of June 16, 1988 to the Convention between the United States of America and the French Republic with respect to Taxes on Income and Property of July 28, 1967, as amended by the Protocols of October 12, 1970, November 24, 1978 and January 17, 1984, together with a related exchange of notes.

The principal objectives of the Protocol are to modify the Convention to accommodate certain provisions of the Tax Reform Act of 1986 (TRA) and to permit France to exempt United States citizens resident in France from French tax on their United States source investment income. In addition, the Protocol will correct certain technical problems which have arisen under the existing Convention.

The present Convention grants France the right to impose its branch profits tax at a rate of 10 percent. It also preserves for the United States the right to impose such a tax, though at the time it entered into force no such tax was imposed under United States law. Under the TRA, the United States imposes a branch tax at a rate of 30 percent, unless a treaty prohibits imposition of the tax or provides for a lower rate, generally the rate of tax on dividends paid by a subsidiary in one country to a parent corporation in the other. Under the Protocol, this rate is 5 percent. The Protocol provides for the imposition of the branch tax at a reciprocal rate of 5 percent, with the bases of the taxes in the two Contracting States to be determined under the laws of those States.

The present Convention contains a Limitation on Benefits article designed to prevent "treaty shopping" by denying benefits of the treaty to persons not properly entitled to those benefits. The United States anti-treaty shopping policy, as reflected in the TRA, calls for a more comprehensive provision than that found in the present Convention. The Protocol strengthens the existing provision and conforms it to the TRA rules by adding a "base erosion" test for treaty shopping.

Certain other changes of a more technical nature also grow out of the TRA. The Protocol specifies that the United States taxes covered are those imposed by the Internal Revenue Code of 1986. The business profits article will subject to tax profits of a permanent establishment even if they are deferred and received after the per-

manent establishment no longer exists. Residents of the Contracting States are defined to include the governments, so that if a governmental entity of one State is engaged in a business activity in the other State it will receive the same treaty benefits as an individual or a corporation resident in that other State.

The Protocol contains a provision, sought by the French Government, under which United States citizens who are resident in France will be exempt from French tax on United States source dividend, interest and royalty income. The exemption will also apply to gains from the sale or exchange of assets giving rise to such dividends, interest or royalties. The provision contains rules designed to limit abuse which results from the transformation of non-exempt income into exempt income. To be eligible for this benefit, United States citizens will have to demonstrate that they have complied with their United States income tax obligations, and will have to satisfy any certification tests required by the French tax authorities.

In addition, the Protocol contains a number of minor provisions intended to resolve problems which have arisen on one or both sides under the present Convention. For example, the Protocol will incorporate into the Convention itself a provision relating to the taxation of income from reinsurance activities which had previously been in an exchange of notes signed at the time of the 1967 Convention. This change will give the rule the force of law in France, as has been true since 1967 in the United States.

Another provision of the Protocol will empower the competent authorities of the Contracting States to specify procedures with which taxpayers must comply in order to receive the benefits of reduced rates of taxation or exemption under the Convention. The French Government needs such authority in order to be able to impose certain certification procedures.

At the request of the French Government, the Protocol includes a definition of "dividends" and makes certain minor modifications in the interest and royalty provisions of the Convention. In none of these cases, however, will the basic rules of the Convention be altered.

The exchange of notes confirms an understanding between the two Governments with regard to paragraph 5 of Article 10 (Interest) of the Convention.

A technical memorandum explaining in detail the provisions of the Convention is being prepared by the Department of the Treasury and will be submitted separately to the Senate Committee on Foreign Relations.

The Department of the Treasury, with the cooperation of the Department of State, was primarily responsible for the negotiation of the Protocol, with related exchange of notes. These instruments have the approval of both Departments.

Respectfully submitted,

GEORGE P. SHULTZ.

PROTOCOL TO THE CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE FRENCH REPUBLIC WITH RESPECT TO TAXES ON INCOME AND PROPERTY OF JULY 28, 1967, AS AMENDED BY THE PROTOCOLS OF OCTOBER 12, 1970, NOVEMBER 24, 1978 AND JANUARY 17, 1984

The Government of the United States of America and the Government of the French Republic, desiring to amend the Convention between the United States of America and the French Republic with respect to taxes on income and property of July 28, 1967, as amended by the Protocols of October 12, 1970, November 24, 1978, and January 17, 1984, have agreed upon the following provisions:

ARTICLE I

Article 1, paragraph 1(a) is amended as follows:

The phrase "the Federal income taxes imposed by the Internal Revenue Code" is replaced by the phrase "the Federal income taxes imposed by the Internal Revenue Code of 1986".

ARTICLE II

In Article 3:

At the end of subparagraph 1(a) "and" is deleted; at the end of subparagraph 1(b) the period is replaced with ",and", and a new subparagraph 1(c) is added which reads as follows:

"(c) France or any of its local authorities."

At the end of subparagraph 2(a) "and" is deleted; at the end of subparagraph 2(b) the period is replaced with ",and", and a new subparagraph 2(c) is added which reads as follows:

"(c) the United States or any of its political subdivisions or local authorities."

ARTICLE III

In Article 6:

A new paragraph 3 is added which reads as follows:

3. For the implementation of paragraphs 1 and 2, any income or gain attributable to a permanent establishment during its existence is taxable in the Contracting State where such permanent establishment is situated even if the payments are deferred until such permanent establishment has ceased to exist.

Paragraphs 3 through 5 become respectively paragraphs 4 through 6.

A new paragraph 7 is added which reads as follows:

7. When an insurance company of one of the Contracting States has a permanent establishment in the other Contracting State, the reinsurance premiums received shall be taken into account for the

determination of taxable profits only in the Contracting State of which the company is a resident.

Paragraph 6 becomes paragraph 8.

ARTICLE IV

In Article 9:

Paragraph 4 is replaced by a new paragraph which reads as follows:

4. Dividends paid by a corporation of one of the Contracting States shall be treated as income from sources within that Contracting State, and dividends paid by any other corporation shall be treated as income from sources outside that Contracting State.

A new paragraph 7 is added which reads as follows:

7. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders shares or other rights, not being debt claims, participating in profits, as well as income treated as a distribution by the taxation laws of the Contracting State of which the company making the distribution is a resident.

ARTICLE V

In Article 10, at the end of paragraph 5, a sentence is added which reads as follows:

"In that case such interest shall be deemed to be paid by the permanent establishment or fixed base to the beneficial owner at the latest when it is taken into account as an expense of that permanent establishment or fixed base."

ARTICLE VI

In Article 11:

Paragraph 2 is deleted and replaced as follows:

2. Except as provided in paragraph 3, royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax imposed on such royalties shall not exceed 5 percent of the gross amount paid.

In paragraph 3 the phrase "and beneficially owned" is inserted before the phrase "by a resident".

Paragraph 6 is deleted and replaced as follows:

6. (a) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority, a statutory body or a resident of that State.

(b) Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

(c) Notwithstanding subparagraphs (a) and (b), royalties paid for the use of or the right to use property in the United States shall be deemed to arise therein.

A new paragraph 8 is added which reads as follows:

8. For purposes of this Article, royalties shall be deemed to be paid to the beneficial owner at the latest when they are taken into account as expenses.

ARTICLE VII

In Article 12, a new paragraph 4 is added to read as follows:

"Paragraph (1) of this Article shall not apply in the case of gains described in paragraph (3) of Article 6."

ARTICLE VIII

In Article 13:

Paragraph 1 is deleted and replaced as follows:

1. (a) A French corporation shall be exempt from the United States personal holding company tax in any taxable year if all of its stock is owned by one or more individual residents of France in their individual capacities for that entire year.

(b) A French corporation shall be exempt from the United States accumulated earnings tax in any taxable year if it is a corporation described in paragraph 1 (a) of Article 24 A.

Paragraph 2(a) is deleted and replaced as follows:

2. (a) A corporation which is a resident of a Contracting State and which has a permanent establishment in the other Contracting State may be subject in that other Contracting State to a tax in addition to the tax allowable under the other provisions of this Convention. Such tax, however, may be imposed only on:

(i) in the case of the United States, that portion of the business profits of the corporation attributable to the permanent establishment which represents the "dividend equivalent amount" of those profits, in accordance with the provisions of the Internal Revenue Code; and

(ii) in the case of France, that portion of the business profits of the corporation which is attributable to the permanent establishment and which is included in the base of the French withholding tax in accordance with the provisions of French internal law.

(b) The taxes referred to in subparagraph (a) shall apply to the portion of the business profits attributable to a trade or business conducted in one Contracting State through a partnership by a corporation resident of the other Contracting State which is a member of such partnership.

(c) The taxes referred to in subparagraphs (a) and (b) shall not be imposed at a rate exceeding the rate specified in paragraph 2(b) of Article 9 (Dividends).

Paragraph 2(b) becomes paragraph 3.

ARTICLE IX

In Article 23:

In paragraph (2)(a)(ii), replace "; and" at the end of subparagraph (a) with "," and replace the period at the end of subparagraph (b) with ",".

New subparagraphs (c), (d), and (e) are added to paragraph (2)(a)(ii) to read as follows:

(c) income consisting of dividends derived from sources within the United States (as described in paragraph (4) of Article 9), interest arising in the United States (as described in paragraph (5) of Article 10), or royalties derived from sources within the United States (as described in paragraph (6) of Article 11) which is beneficially owned by a resident of France and which is:

(A) paid by the United States, any political subdivision or any authority thereof; or

(B) paid by a United States legal entity the principal class of shares of or interests in which are substantially and regularly traded on a recognized stock exchange as defined in paragraph 3 of Article 24A; or

(C) paid by a United States corporation other than one 10 percent or more of the outstanding shares of the voting stock of which the resident of France owned (either directly or indirectly) at all times during the part of such corporation's taxable year preceding the date of payment of the income to the owner of the income and during the prior taxable year (if any) of such corporation, provided that less than 50 percent of such stock is owned by residents of France during the same period; or

(D) paid by a resident of the United States not more than 25 percent of the gross income of which for the prior taxable year (if any) consisted directly or indirectly of income derived from sources outside the United States,

(d) capital gains derived from the sale or exchange of capital assets generating income as defined in subparagraph (c). However such sale or exchange shall remain taken into account for the determination of the threshold of taxation applicable in France to capital gains on movable property, and

(e) profits or gains derived from transactions on a public United States options or futures market.

The beginning of subparagraph (b) of paragraph 2 is amended to read as follows:

"(b) As regards income or profits taxable in the United States under articles 9, 11, 13 or 15 A . . ." (the rest is not modified)

A new subparagraph (e) is added at the end of paragraph 2 which reads as follows:

"(e) The exemption provided by paragraph (2)(a)(ii) shall be granted:

(i) only if the citizens of the United States who are residents of France demonstrate that they have complied with their United States income tax obligations, and

(ii) upon receipt by the competent authority of France of such certification as may be prescribed by such authority or upon request to such authority for refund of tax withheld together with the presentation of any required certification."

ARTICLE X

In Article 24, the last sentence of paragraph 2 is deleted and replaced as follows:

The provisions of this paragraph shall not be construed to prevent the application by either Contracting State of its tax on branch profits described in paragraph 2 of Article 13 (Branch Profits) of the Convention.

ARTICLE XI

Article 24 A is replaced by the following article:

ARTICLE 24 A

Limitation on Benefits

1. A person (other than an individual) which is a resident of a Contracting State and derives income from the other Contracting State shall not be entitled under this Convention to relief from taxation in that other Contracting State, nor to relief from double taxation in the first mentioned Contracting State, unless:

(a) more than 50 percent of the beneficial interest in such person (or, in the case of a corporation, more than 50 percent of the number of shares of each class of the corporation's shares) is owned, directly or indirectly, by any combination of one or more of:

(i) individuals who are residents of the United States;

(ii) citizens of the United States;

(iii) individuals who are residents of France;

(iv) corporations in whose principal class of shares there is substantial and regular trading on a recognized stock exchange as defined in paragraph 3; and

(v) the Contracting States, their local authorities, or political subdivisions of the United States; and

(b) not more than 50 percent of the gross income of such person is used, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons who are not residents of the Contracting States, one of the Contracting States or its local authorities, or political subdivisions of the United States or citizens of the United States.

2. The provisions of paragraph 1 shall not apply if the establishment, acquisition and maintenance of such person and the conduct of its operations did not have as one of its principal purposes the purpose of obtaining benefits under the Convention.

3. The provisions of paragraph 1 shall not apply if the person deriving the income is a corporation which is a resident of a Contracting State in whose principal class of shares there is substantial and regular trading on a recognized stock exchange. For purposes of the preceding sentence, the term "recognized stock exchange" means:

(a) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national se-

curities exchange for purposes of the Securities Exchange Act of 1934;

(b) the French stock exchanges (Bourses de Valeurs); and

(c) any other stock exchange agreed upon by the competent authorities of the Contracting States.

ARTICLE XII

A new Article 25 A "Provisions for Implementation" is added which reads as follows:

The competent authorities of the Contracting States may prescribe rules and procedures, jointly or separately, to determine the mode of application of the provisions of this Convention.

ARTICLE XIII

1. Each party will notify the other upon the completion of the necessary constitutional procedures which concern it for entry into force of the present agreement which will take effect on the day of receipt of the last notification.

2. The provisions of this Protocol shall apply:

(a) as regards taxes withheld at source, to amounts payable on the first day of the second month following the date of entry into force of this Protocol;

(b) as regards taxes referred to in paragraph 2 of Article 13 of the Convention, as added by Article VIII of this Protocol, to profits realized in any taxable year ending on or after the date of entry into force of this Protocol;

(c) as regards the new subparagraphs (c), (d), and (e) of paragraph (2)(a)(ii) and the new subparagraph (e) of paragraph 2 of Article 23 of the Convention, as added by Article IX of this Protocol, to income described therein derived on or after January 1st 1988;

(d) as regards all other modifications of the Convention made by this Protocol, for taxable years beginning on or after the date of entry into force of this Protocol.

ARTICLE XIV

This Protocol shall remain in force as long as the Convention of July 28, 1967, as amended by the Protocols of October 12, 1970, November 24, 1978 and January 17, 1984, remains in force.

IN WITNESS WHEREOF, the representatives of the governments, duly authorized thereto, have signed this Protocol.

DONE at Paris this 16th day of June 1988, in duplicate, in the English and French languages, both texts being equally authoritative.

For the Government of the United States of America:

JOE M. RODGERS.

For the Government of the French Republic:

PIERRE BÉRÉGOVOY.

EMBASSY OF THE
UNITED STATES OF AMERICA,
June 16, 1988.

No. 181.

His Excellency PIERRE BÉRÉGOVOY,
Ministre d'Etat, Ministre de l'Economie des Finances et du Budget, Paris.

EXCELLENCY: I have the honor to refer to the Protocol, signed today, to the Convention between the United States of America and the French Republic with respect to Taxes on Income and Property of July 28, 1967, as amended by the Protocols of October 12, 1970, November 24, 1978, and January 17, 1984.

During the course of discussions leading to the development of the Protocol, the United States and French delegations agreed that nothing in paragraph 5 of Article 10 (Interest) of the Convention shall be understood to prevent or limit the application by a Contracting State of its internal law, or of its income tax treaty with a third State, with respect to interest paid by a permanent establishment located in the Contracting State to any resident of a third State. The provisions of internal law referred to in the preceding sentence are, in the case of the United States, those provisions of the Internal Revenue Code that impose a tax on interest described in Section 884(f)(1)(A) of such Code and, in the Code Général des Impots.

If this is in accord with your understanding, I would appreciate a confirmation from you to this effect.

Accept, Excellency, the renewed assurances of my highest consideration.

JOE M. RODGERS.

Certified True Copy:

T. WHITTIER WARTHIN.

[Translation]

DEPARTMENT OF STATE,
DIVISION OF LANGUAGE SERVICES,
Paris, June 16, 1988.

LS No. 126551.

Mr. JOE RODGERS,
Ambassador of the United States of America.

MR. AMBASSADOR: I have the honor to acknowledge receipt of your letter dated today, which reads as follows:

> I have the honor to refer to the Protocol, signed today, to the Convention between the United States of America and the French Republic with respect to Taxes on Income and Property of July 28, 1967, as amended by the Protocols of October 12, 1970, November 24, 1978, and January 17, 1984.
>
> During the course of discussions leading to the development of the Protocol, the United States and French delegations agreed that nothing in paragraph 5 of Article 10 (Interest) of the Convention shall be understood to prevent or

limit the application by a Contracting State of its internal law, or of its income tax treaty with a third State, with respect to interest paid by a permanent establishment located in the Contracting State to any resident of a third State.

The provisions of internal law referred to in the preceding sentence are, in the case of the United States , those provisions of the Internal Revenue Code that impose a tax on interest described in Section 884(f)(1)(A) of such Code and, in the case of France, Article 119 bis and 125A of the Code Général des Impôts

If this is in accord with your understanding, I would appreciate a confirmation from you to this effect.

I have the honor to confirm to you that the contents of this letter are in accord with the understanding of my Government.

Accept, Mr. Ambassador, the assurances of my high consideration.

PIERRE BÉRÉGOVOY,
Minister of State, Minister of Economy, Finance, and Budget.

CERTIFICATION OF TRANSLATION

I hereby certify that the above translation bearing LS No. 126551 was prepared to the best of my knowledge and belief.

Dated: July 21, 1988.

_____,
Chief, Translating Division.

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100TH CONGRESS
2d Session

SENATE

TREATY DOC.
100-22

TAX CONVENTION WITH THE REPUBLIC OF INDONESIA

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF INDONESIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, TOGETHER WITH A RELATED PROTOCOL AND EXCHANGE OF NOTES, SIGNED AT JAKARTA ON JULY 11, 1988

AUGUST 5, 1988.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE

19-118

WASHINGTON : 1988

S385-13

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *August 5, 1988.*

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, the Convention between the Government of the United States of America and the Government of the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, together with a related Protocol and exchange of notes, signed at Jakarta on July 11, 1988. I also transmit for the information of the Senate the report of the Department of State with respect thereto.

The Convention is the first tax treaty to be negotiated between the United States and Indonesia. It is based on model income tax conventions of the Organization for Economic Cooperation and Development, the United Nations, and the United States, with changes to reflect the tax laws and policies of the two countries.

It is most desirable that this Convention, together with the related Protocol and exchange of notes, be considered by the Senate as soon as possible and that the Senate give advice and consent to ratification.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, July 28, 1988.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Convention between the Government of the United States of America and the Government of the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, together with a related Protocol and exchange of notes, signed at Jakarta on July 11, 1988.

This is the first income tax agreement between the United States and Indonesia and is based on model income tax conventions published by the Organization for Economic Cooperation and Development (1977), the United Nations (1980) and the United States (1981), with adaptations to reflect the tax laws and treaty policies of the two countries. The Convention was to have been signed in April 1974. However, signature of the convention was postponed pending agreement on a territorial definition of "Indonesia" in Article 3, paragraph 1(a). This problem was finally resolved by means of an agreed interpretation of Article 3(1)(a), in an exchange of notes, confirming the understanding that the United States recognizes the Indonesian archipelago and Indonesia respects international transit rights therein.

The Convention provides that business profits derived by a resident of the United States or Indonesia may be taxed by the other country only to the extent attributable to a fixed place of business (a "permanent establishment") in that other country, and then on a net basis. Profits from international shipping and aircraft operations are exempt from tax at source reciprocally.

The rate of tax at source on dividends, branch profits, interest and royalties is limited in general to 15 percent of the gross amount, with exemption at source on interest paid to the other government or its agencies and instrumentalities, and a maximum rate of 10 percent on payments for the rental of certain equipment.

The Convention further provides that individuals who are residents of one country may be taxed by the other country on their income for personal services if they stay in the other country for 120 days or more in a twelve-month period or meet certain other conditions. Special provisions apply to entertainers, and special exemptions are provided for visiting students and teachers. Rules are also provided for the taxation of pensions and other income flowing from one country to the other.

The Convention assures nondiscriminatory taxation and relief from double taxation and should, therefore, encourage investment in Indonesia and enhance the role of the private sector in Indonesian economic development. It also provides for exchanges of information and cooperation between the tax authorities of the two countries to avoid double taxation and prevent fiscal evasion. Special rules prevent abuse of the benefits of the Convention by residents of third countries.

The Protocol contains certain clarifications concerning taxation of income from the operation of ships and aircraft, the definition of "permanent establishment," and tax on interest payments.

A technical memorandum explaining in detail the provisions of the Convention is being prepared by the Department of the Treasury and will be submitted separately to the Senate Committee on Foreign Relations.

The Department of the Treasury, with the cooperation of the Department of State, was primarily responsible for the negotiation of the Convention and the Protocol; and the Department of State was primarily responsible for negotiating the understanding reflected in the related exchange of notes. They have the approval of both Departments.

Respectfully submitted,

GEORGE P. SHULTZ.

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF INDONESIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the United States of America and the Government of the Republic of Indonesia, desiring to conclude a convention for the avoidance of double taxation of income and the prevention of fiscal evasion, have agreed as follows:

ARTICLE 1

PERSONAL SCOPE

This Convention is applicable to persons who are residents of one or both of the Contracting States.

ARTICLE 2

TAXES COVERED

(1) The existing taxes which are the subject of this Convention are:

(a) In the case of Indonesia, the income tax (pajak penghasilan 1984), and to the extent provided in such income tax, the company tax (pajak perseroan 1925), and the tax on interest, dividends, and royalties (pajak atas bunga, dividen dan royalty 1970).

(b) In the case of the United States, the income taxes imposed by the Internal Revenue Code (but excluding the accumulated earnings tax, the personal holding company tax, and social security taxes).

(2) The Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes.

ARTICLE 3

GENERAL DEFINITIONS

(1) For purposes of this Convention only, unless the context otherwise requires:

(a) The term "Indonesia" comprises the territory of the Republic of Indonesia and the adjacent seas which the Republic of Indonesia has sovereignty, sovereign rights or jurisdictions in accordance with the provisions of the 1982 United Nations Convention on the Law of the Sea.

(b) The term "United States" means the United States of America. When used in a geographical sense, the term "United States" means the States thereof, the District of Columbia and those parts of the continental shelf and adjacent seas over

which the United States has sovereignty, sovereign rights or other rights in accordance with international law.

(c) The term "one of the Contracting States" of "the other Contracting State" means Indonesia or the United States, as the context requires.

(d) The term "person" includes an individual, a partnership, a company, an estate, a trust, or any body of persons.

(e) The term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes.

(f) The term "competent authority"' means:

(i) In the case of Indonesia, the Minister of Finance or his authorized representative, and

(ii) In the case of the United States, the Secretary of the Treasury or his authorized representative.

(g) The term "Indonesian tax" means tax imposed by Indonesia to which this Convention applies by virtue of Article 2 (Taxes Covered) and the term "United States tax" means tax imposed by the United States to which this Convention applies by virtue of Article 2 (Taxes Covered).

(h) The term "international traffic" means any transport by a ship or aircraft, except where such transport is solely between places in the other Contracting State.

(2) Any other term used in this Convention and not defined in this Convention shall, unless the context otherwise requires, have the meaning which it has under the laws of the Contracting State whose tax is being determined. Notwithstanding the preceding sentence, if the meaning of such a term under the laws of one of the Contracting States is different from the meaning of the term under the laws of the other Contracting State, or if the meaning of such a term is not readily determinable under the laws of one of the Contracting States, the competent authorities of the Contracting States may, in order to prevent double taxation or to further any other purpose of this Convention, establish a common meaning of the term for the purposes of the Convention.

ARTICLE 4

FISCAL RESIDENCE

(1) In this Convention, the term "resident of a Contracting State" means any person who under the laws of that State is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature. For purposes of United States tax, in the case of a partnership, estate, or trust, the term applies only to the extent that the income derived by such person is subject to United States tax as the income of a resident, either in its hands or in the hands of its partners or beneficiaries.

(2) Where by reason of the provisions of paragraph (1) an individual is a resident of both Contracting States:

(a) he shall be deemed to be a resident of that Contracting State in which he maintains his permanent home. If he has a permanent home in both Contracting States or in neither of the Contracting States, he shall be deemed to be a resident of

that Contracting State with which his personal and economic relations are closest (center of vital interests);

(b) if the Contracting State in which he has his center of vital interests cannot be determined, he shall be deemed to be a resident of that Contracting State in which he has a habitual abode;

(c) if he has a habitual abode in both Contracting States or in neither of the Contracting States, he shall be deemed to be a resident of the Contracting State of which he is a citizen; and

(d) if he is a citizen of both Contracting States or of neither Contracting State, the competent authorities of the Contracting States shall settle the question by mutual agreement.

For purposes of this paragraph, a permanent home is the place where an individual dwells with his family.

(3) An individual who is deemed to be a resident of one of the Contracting States and not a resident of the other Contracting State by reason of the provisions of paragraph (2) shall be deemed to be a resident only of the first-mentioned Contracting State for all purposes of this Convention, including Article 28 (General Rules of Taxation).

(4) Where by reason of the provisions of paragraph (1) a company is a resident of both Contracting States, when it shall be deemed to be a resident of the State in which it is organized or incorporated.

ARTICLE 5

PERMANENT ESTABLISHMENT

(1) For the purpose of this Convention, the term "permanent establishment" means a fixed place of business through which the business of a resident of one of the Contracting States is wholly or partly carried on.

(2) The term "permanent establishment" includes but is not limited to:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a farm or plantation;

(g) a warehouse;

(h) a mine, oil or gas well, quarry, or other place of extraction of natural resources;

(i) a building site or construction or assembly or installation project, or supervisory activities in connection therewith, or an installation or drilling rig or ship used for the exploration or exploitation of natural resources, which exists or continues for more than 120 days;

(j) the furnishing of services, including consultancy services, through employees or other personnel engaged for such purposes, but only where activities of that nature continue (for the same or a connected project) for more than 120 days within any consecutive 12-month period, provided that a permanent establishment shall not exist in any taxable year in which

such services are rendered in that State for a period or periods aggregating less than 30 days in that taxable year;

(3) Notwithstanding paragraphs (1) and (2), a permanent establishment shall not be deemed to exist by reason of one or more of the following:

(a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the resident;

(b) the maintenance of a stock of goods or merchandise belonging to the resident solely for the purpose of processing by play;

(c) the maintenance of a stock of good or merchandise belonging to the reisdent solely for the purpose of processing by another person;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the resident; or

(e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the resident.

(4) A person acting in one of the Contracting States on behalf of a resident of the other Contracting State, other than an agent of an independent status to whom paragraph (5) applies, shall be deemed to be a permanent establishment in the first-mentioned Contracting State if such person—

(a) has and habitually exercises in the first-mentioned Contracting State, an authority to conclude contracts on behalf of that resident, unless the activities of such person are limited to those mentioned in paragraph (3) which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions, of that paragraph; or

(b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise belonging to the resident from which he regularly fills orders or makes deliveries on behalf of that resident and additional activities conducted in that State on behalf of the resident have contributed to the sale of such goods or merchandise.

(5) A resident of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because such resident carries on business in that other Contracting State through a broker, general commission agent, or any other agent of an independent status, where such broker or agent is acting in the ordinary course of his business.

(6) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State or which carries on business in that other State (whether through a permanent establishment or otherwise) shall not of itself constitute either company a permanent establishment of the other.

(7) An insurance company which is a resident of one of the Contracting States, shall, except with regard to reinsurance, be considered as having a permanent establishment in the other Contracting State if, through a person other than one described in paragraph

(5), such company receives premiums from or insures risks in the territory of that other Contracting State.

ARTICLE 6

INCOME FROM IMMOVABLE (REAL) PROPERTY

(1) Income from immovable property, including income in respect of the operation of mines, oil or gas wells, quarries, or other natural resources and gains derived from the sale, exchange, or other disposition of such property or of the right giving rise to such income, may be taxed by the Contracting State in which such immovable property, mines, oil or gas wells, quarries, or other natural resources are situated. For purposes of this Convention, interest on indebtedness secured by immovable property or secured by a right giving rise to income in respect of the operation of mines, quarries, or other natural resources shall not be regarded as income from immovable property.

(2) Paragraph (1) shall apply to income derived from the usufruct, direct use, letting, or use in any other form of immovable property.

(3) The provisions of paragraphs (1) and (2) shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7

SOURCE OF INCOME

For purposes of this Convention:

(1) Dividends paid by a resident of a Contracting State shall be treated as income from sources within that State.

(2) Interest shall be treated as income from sources within a Contracting State only if paid by such Contracting State, a political subdivision or a local authority thereof, or by a resident of that Contracting State. Nothwithstanding the preceding sentence, if the person paying the interest (whether or not such person is a resident of one of the Contracting States) has a permanent establishment in one of the Contracting States and such interest is borne by such permanent establishment, such interest shall be deemed to be from sources within the Contracting State in which the permanent establishment is situated.

(3) Royalties described in paragraph (3) of Article 13 (Royalties) for the use of, or the right to use, property or rights described in such paragraph within a Contracting State shall be treated as income from sources within such Contracting State.

(4) Income from immovable property including income in respect to the operation of mines, oil wells, quarries, or other natural resources (including gains derived from the sale of such property or the right giving rise to such income) shall be treated as income from sources within a Contracting State only if such property is situated in that Contracting State.

(5) Income from the rental of tangible personal (movable) property, other than ships or aircraft or containers used in international traffic, shall be treated as income from sources within a Contract-

ing State only if such property is situated in that Contracting State.

(6) Income received by an individual for his performance of labor or personal services, whether as an employee or in an independent capacity, shall be treated as income from sources within a Contracting State only to the extent that such services are performed in that Contracting State. Income from personal services performed aboard ships or aircraft operated by a resident of one of the Contracting States in international traffic shall be treated as income from sources within that Contracting State if rendered by a member of the regular complement of the ship or aircraft. For purposes of this paragraph, income from labor or personal services includes pensions (as defined in paragraph (4) of Article 21 (Private Pensions and Annuities)) paid in respect of such services. Notwithstanding the preceding provisions of this paragraph, remuneration described in Article 22 (Social Security Payments) shall be treated as income from sources within a Contracting State only if paid by or from the public funds of that Contracting State or a political subdivision or local authority thereof.

(7) Income from the sale, exchange or other disposition of property described in paragraph (1) (a) and (b) of Article 14 (Capital Gains) shall be treated as income from sources within Indonesia or the United States, as the case may be.

(8) Notwithstanding paragraphs (1) through (6), business profits which are attributable to a permanent establishment which the recipient, a resident of one of the Contracting States, has in the other Contracting State, including income derived from immovable property and natural resources and dividends, interest, royalties (as defined in paragraph (3) of Article 13 (Royalties)) and capital gains shall be treated as income from sources within that other Contracting State, but only if the property or rights giving rise to such income, dividends, interest, royalties, or capital gains are effectively connected with such permanent establishment.

(9) The source of any item of income to which paragraphs (1) through (8) are not applicable shall be determined by each of the Contracting States in accordance with its own law. Notwithstanding the preceding sentence, if the source of any item of income under the laws of one Contracting State is different from the source of such item of income under the laws of the other Contracting State or if the source of such income is not readily determinable under the laws of one of the Contracting States, the competent authorities of the Contracting States may, in order to prevent double taxation or further any other purpose of this Convention, establish a common source of the item of income for purposes of this Convention.

ARTICLE 8

BUSINESS PROFITS

(1) Business profits of a resident of one of the Contracting States shall be exempt from tax by the other Contracting State unless such resident carries on business in that other Contracting State through a permanent establishment situated therein. If such resident carries on business as aforesaid, tax may be imposed by that

other Contracting State on the business profits of such resident but only on so much of such profits as are attributable to the permanent establishment or are derived from sources within such other Contracting State from sales of goods or merchandise of the same kind as those sold, or from other business transactions of the same kinds as those effected, through the permanent establishment.

(2) Where a resident of one of the Contracting States carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to the permanent establishment the business profits which would be attributable to such permanent establishment if such permanent establishment were an independent entity engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the resident of which it is a permanent establishment.

(3) In the determination of the business profits of a permanent establishment, there shall be allowed as deductions expenses which are reasonably connected with such profits, including executive and general administrative expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights or by way of commission for specific services performed or for management or by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

(4) No profits shall be attributed to a permanent establishment of a resident of one of the Contracting States in the other Contracting State merely by reason of the purchase of goods or merchandise by that permanent establishment, or by the resident of which it is a permanent establishment, for the account of that resident.

(5) Where business profits include items of income which are dealt with separately in other articles of this Convention, the provisions of those articles shall, except as otherwise provided therein, supersede the provisions of this Article.

ARTICLE 9

SHIPPING AND AIR TRANSPORT

(1) Notwithstanding Article 8 (Business Profits), a resident of a Contracting State shall be exempt from taxation by the other Contracting State with respect to income derived by that resident from the operation of ships or aircraft in international traffic.

(2) For the purposes of paragraph 1, income from the operation of ships or aircraft in international traffic includes:

(a) income from the rental of ships or aircraft in international traffic on a full basis;

(b) income from the rental of aircraft on a bareboat basis if the aircraft is operated in international traffic;

(c) income from the rental of ships on a bareboat basis if the ship is operated in international traffic and the lessee is not a resident of the other Contracting State or a permanent establishment in that other State; and

(d) income from the use or maintenance of containers (and related equipment for the transport of containers) used in international traffic if such income is incidental to the income described in paragraph 1.

(3) Notwithstanding Article 14 (Capital Gains), gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic or containers (and related equipment for the transport of containers) used in international traffic shall be taxable only in that State.

ARTICLE 10

RELATED PERSONS

(1) Where a resident of one of the Contracting States and any other person are related and where such related persons make arrangements or impose conditions between themselves which are different from those which would be made between independent persons, any income, deductions, credits, or allowances which would, but for those arrangements or conditions, have been taken into account in computing the income (or loss) of, or the tax payable by, one of such persons, may be taken into account in computing the amount of the income subject to tax and the taxes payable by such person.

(2) A person is related to another person if either person participates directly or indirectly in the management, control or capital of the other, or if any third person or persons participates directly or indirectly in the management, control or capital of both. For this purpose, the term "control" includes any kind of control, whether or not legally enforceable, and however exercised or exercisable.

(3) Where a Contracting State includes in the profits of a resident of that State, and taxes accordingly, profits on which a resident of the other Contracting State has been charged to tax in that other State, and the profits so included are profits which would have accrued to the resident of the first-mentioned State if the conditions made between the two residents had been those which would have been made between independent persons, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be paid to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 11

DIVIDENDS

(1) Dividends derived from sources within one of the Contracting States by a resident of the other Contracting State may be taxed by both Contracting States.

(2) However, if the beneficial owner of the dividends is a resident of the other Contracting State, the tax charged by the first-mentioned State may not exceed 15 percent of the gross amount of the dividends actually distributed.

(3) Paragraph (2) shall not apply if the recipient of the dividends, being a resident of one of the Contracting States, has a permanent establishment or fixed base in the other Contracting State and the shares with respect to which the dividends are paid are effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 8 (Business Profits) or Article 15 (Independent Personal Services) shall apply.

(4) Where a company which is a resident of a Contracting State has a permanent establishment in the other Contracting State, that other State may impose an additional tax in accordance with its law on the profits attributable to the permanent establishment (after deducting therefrom the company tax and other taxes on income imposed thereon in that other State) and on interest payments allocable to the permanent establishment, but the additional tax so charged shall not exceed 15 percent.

(5) The rate of tax referred to in paragraph (4) of this Article shall not affect the rate of any such additional tax contained in any production sharing contracts and contracts of work (or any other similar contracts) relating to oil and gas or other mineral products negotiated by the Government of Indonesia, its instrumentality, its relevant State oil company or any other entity thereof with a person who is a resident of the United States.

ARTICLE 12

INTEREST

(1) Interest derived from sources within one of the Contracting States by a resident of the other Contracting State may be taxed by both Contracting States.

(2) The rate of tax imposed by one of the Contracting States on interest derived from sources within that Contracting State and beneficially owned by a resident of the other Contracting State shall not exceed 15 percent of the gross amount of such interest.

(3) Notwithstanding paragraphs (1) and (2), interest derived from sources within one of the Contracting States by the other Contracting State or any agency or instrumentality of that other State not subject to tax by that State on its income shall be exempt from tax in the first-mentioned State.

(4) Paragraph (2) shall not apply if the recipient of the interest, being a resident of one of the Contracting States, has a permanent establishment or fixed base in the other Contracting State and the indebtedness giving rise to the interest is effectively connected with such permanent establishment or fixed base. In such a case the

provisions of Article 8 (Business Profits) or Article 15 (Independent Personal Services) shall apply.

(5) Where any amount designated as interest paid to any related person exceeds an amount which would have been paid to an unrelated person, the provisions of this Article shall apply only to so much of the interest as would have been paid to an unrelated person. In such a case the excess payment may be taxed by each Contracting State according to its own law, including the provisions of this Convention where applicable.

(6) The term "interest" as used in this Convention means income from bonds, debentures, Government securities, notes, or other evidences of indebtedness, whether or not secured by a mortgage or other securities and whether or not carrying a right to participate in profits, and debt-claims of every kind, as well as all other income which, under the taxation law of the Contracting State in which the income has its source, is assimilated to income from money lent.

ARTICLE 13

ROYALTIES

(1) Royalties derived from sources within one of the Contracting States by a resident of other Contracting State may be taxed by both Contracting States.

(2) The rate of tax imposed by a Contracting State on royalties derived from sources within that Contracting State and beneficially owned by a resident of the other Contracting State shall not exceed 15 percent of the gross amount of royalties described in paragraph 3(a) and 10 percent of the gross amount of royalties described in paragraph 3(b).

(3) (a) The term "royalties" as used in this Article means payments of any kind made as consideration for the use of, or the right to use, copyrights of literary, artistic, or scientific works (including copyrights or motion pictures and films, tapes or other means of reproduction used for radio or television broadcasting), patents, designs, models, plans, secret processes or formula, trademarks, or for information concerning industrial, commercial or scientific experience. It also includes gains derived from the sale, exchange, or other dispositions of any such property or rights to the extent that the amounts realized on such sale, exchange or other disposition for consideration are contingent on the productivity, use, or disposition of such property or rights.

(b) The term "royalties" as used in this Article also includes payments by a resident of one of the Contracting States for the use of, or the right to use, industrial, commercial or scientific equipment, but not including ships, aircraft or containers the income from which is exempt from tax by the other Contracting State under Article 9 (Shipping and Air Transport).

(4) Paragraph (2) shall not apply if the recipient of the royalty, being a resident of one of the Contracting States, has in the other Contracting State a permanent establishment or fixed base and the property or rights giving rise to the royalty is effectively connected with such permanent establishment. In such a case the provisions

of Article 8 (Business Profits) or Article 15 (Independent Personal Services) shall apply.

(5) Where any amount designated as a royalty paid to any related person exceeds an amount which would have been paid to an unrelated person, the provisions of this Article shall apply only to so much of the royalty as would have been paid to an unrelated person. In such a case the excess payment may be taxed by each Contracting State according to its own law, including the provisions of this Convention where applicable.

ARTICLE 14

CAPITAL GAINS

(1) Gains derived by a resident of a Contracting State from the alienation of property described in Article 6 (Income from Immovable (Real) Property) and situated in the other Contracting State may be taxed in that other State. The term "property described in Article 6 (Income from Immovable (Real) Property) situated within the other Contracting State" includes—

(a) Where Indonesia is the other Contracting State, an interest in real property situated in Indonesia; and

(b) Where the United States is the other Contracting State, a United States real property interest.

(2) A resident of one of the Contracting States shall be exempt from tax by the other Contracting State of gains derived from the sale, exchange, or other disposition of capital assets other than assets described in paragraph (1) unless—

(a) The recipient of the gain has a permanent establishment or fixed base in the other Contracting State and the property giving rise to the gain is effectively connected with such permanent establishment or fixed base, in which case the provisions of Article 8 (Business Profits) or Article 15 (Independent Personal Services) shall apply; or

(b) The recipient of the gain is an individual and is present in the other Contracting State for a period or periods aggregating 120 days or more during the taxable year.

(3) Notwithstanding paragraph (2), gains derived by a resident of a Contracting State from the deemed alienation of assets described in paragraph (2)(i) of Article 5 (Permanent Establishment) and used for the exploration for or exploitation of oil and gas resources shall be taxable only in that State.

ARTICLE 15

INDEPENDENT PERSONAL SERVICES

(1) Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent characters shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

(a) If he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, ony so much of the income as is attributa-

ble to that fixed base may be taxed in that other Contracting State; or

(b) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 120 days in any consecutive 12-month period; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

(2) The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 16

DEPENDENT PERSONAL SERVICES

(1) Wages, salaries, and similar remuneration derived by an individual who is a resident of one of the Contracting States from labor or personal services performed as an employee, including income from services performed by an officer of a corporation or company, may be taxed by that Contracting State. Except as provided by paragraph (2), such remuneration derived from sources within the other Contracting State may also be taxed by that other Contracting State.

(2) Remuneration described in paragraph (1) derived by an individual who is a resident of one of the Contracting States shall be exempt from tax by the other Contracting State if—

(a) he is present in that other Contracting State for a period or periods aggregating less than 120 days in any consecutive 12-month period; and

(b) the remuneration is paid by or on behalf of an employer who is not a resident of the other State; and

(c) the remuneration is not borne as such or reimbursed by a permanent establishment which the employer has in that other Contracting State.

(3) Notwithstanding paragraph (2), remuneration derived by an individual from the performance of labor or personal services as an employee aboard ships or aircraft operated by a resident of one of the Contracting States in international traffic shall be exempt from tax by the other Contracting State if such individual is a member of the regular complement of the ship or aircraft.

ARTICLE 17

ARTISTES AND ATHLETES

(1) Notwithstanding Articles 15 (Independent Personal Services) and 16 (Dependent Personal Services), income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which those activities are exercised if the gross amount of such remuneration, including expenses reimbursed to him or borne on his behalf, exceeds in the aggregate 2,000 United States dollars or its equivalent in Indonesian rupiahs in any consecutive 12-month period.

(2) Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but is diverted to another person, that income may, notwithstanding the provisions of Articles 8 (Business Profits) and 15 (Independent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

(3) The provisions of paragraph 1 and 2 shall not apply to remuneration or profits derived from activities exercised in a Contracting State if the visit to that State is substantially supported or sponsored by the other Contracting State and is certified by the competent authority of the sending State to qualify under this provision.

ARTICLE 18

GOVERNMENT SERVICE

(1) (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to any individual in respect to services rendered to that State or political subdivision or local authority thereof shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the recipient is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of performing the services.

(2) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or political subdivision or local authority thereof shall be taxable only in that State.

(3) The provisions of Articles 15 (Independent Personal Services), 16 (Dependent Personal Services), and 21 (Private Pensions and Annuities) shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 19

STUDENTS AND TRAINEES

(1) (a) An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in the other State solely:

(i) as a student at a recognized university, college, school or other similar recognized educational institution in that other State; or

(ii) as a recipient of a grant, allowance or award for the primary purpose of study, research or training from the Government of either state or from a scientific, educational, religious or charitable organization or under a technical assistance program entered into by the Government of either State;

shall be exempt from tax in that other State for a period not exceeding five years from his date of arrival in that other State on amounts described in subparagraph (b).

(b) The amounts referred to in subparagraph (a) are:

(i) all remittances from abroad for the purposes of his maintenance, education, study, research, or training;

(ii) the amount of such grant, allowance or award; and

(iii) any remuneration not exceeding two thousand United States dollars or its equivalent in Indonesian rupiahs per year in respect of services in that other State, provided the services are performed in connection with his study, research or training or are necessary for the purposes of his maintenance.

(2) An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in the other State solely as a business or technical apprentice shall be exempt from tax in that other State for a period not exceeding twelve consecutive months on his income from personal services in an aggregate amount not in excess of 7,500 United States dollars or its equivalent in Indonesian rupiahs.

ARTICLE 20

TEACHERS AND RESEARCHERS

(1) An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State, and who, at the invitation of a university, college, school or other similar educational institution, visits that other State solely for the purpose of teaching or research or both at such educational institution shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from his date of arrival in that other State. An individual shall be entitled to the benefits of this paragraph only once.

(2) This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

ARTICLE 21

PRIVATE PENSIONS AND ANNUITIES

(1) Except as provided in Article 18 (Government Service), pensions and other similar remuneration in consideration of past employment derived from sources within one of the Contracting States by a resident of the other Contracting State may be taxed by both Contracting States. If the beneficial owner of pensions and other similar remuneration is a resident of the other Contracting State, the tax so charged may not exceed 15 percent of the gross amount thereof.

(2) Annuities paid to an individual who is a resident of one of the Contracting States shall be taxable only in that Contracting State.

(3) Alimony and child support payments made by an individual who is a resident of one of the Contracting States to an individual who is a resident of the other Contracting State shall be exempt from tax in that other Contracting State.

(4) The term "pensions and other similar remuneration", as used in this Article, means payments made by reason of retirement or death in consideration for services rendered, or by way of compensation for injuries received in connection with past employment.

(5) The term "annuities", as used in this Article, means a stated sum paid periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

(6) The term "alimony", as used in this Article, means periodic payments made pursuant to a decree of divorce, separate maintenance agreement, or support or separation agreement.

ARTICLE 22

SOCIAL SECURITY PAYMENTS

Social security payments and similar benefits paid out of public funds by one of the Contracting States to an individual who is a resident of the other Contracting State or a citizen of the United States shall be taxable only in the first-mentioned Contracting State. This Article shall not apply to payments described in Article 18 (Government Service).

ARTICLE 23

RELIEF FROM DOUBLE TAXATION

Double taxation of income shall be avoided in the following manner:

(1) In accordance with the provisions and subject to the limitations of the law of the United States, as in force from time to time, the United States shall allow to a citizen or resident of the United States as a credit against the United States tax the appropriate amount of Indonesian tax. Such appropriate amount shall be based upon the amount of tax paid to Indonesia, but the credit shall not exceed the limitations provided by United States law for the taxable year. For the purpose of applying the United States credit in relation to taxes paid to Indonesia, the rules set forth in Article 7 (Source of Income) shall be applied to determine the source of income, subject to such source rules in domestic law as apply solely for the purposes of limiting the foreign tax credit.

(2) In accordance with the provisions and subject to the limitations of the law of Indonesia, as in force from time to time, Indonesia shall allow to a resident of Indonesia as a credit against Indonesian tax the appropriate amount of income taxes paid to the United States. Such appropriate amount shall be based upon the amount of tax paid to the United States but shall not exceed the limitations provided by Indonesian law for the taxable year. For the purpose of applying the Indonesian credit in relation to taxes paid to the United States, the rules set forth in Article 7 (Source of Income) shall be applied to determine the source of income.

ARTICLE 24

NON-DISCRIMINATION

(1) A citizen of one of the Contracting States who is a resident of the other Contracting State shall not be subjected in that other Contracting State to more burdensome taxes or connected requirements than a citizen of that other Contracting State who is a resident therefore under the same conditions or circumstances.

(2) Except as provided in paragraph 4 of Article 11 (Dividends), a permanent establishment which a resident of one of the Contracting States has in the other Contracting State shall not be subject in that other Contracting State to more burdensome taxes or connected requirements than a resident of that other Contracting State carrying on the same activities. This paragraph shall not be construed as obliging a Contracting State to grant to individual residents of the other Contracting State any personal allowances, reliefs, or deductions for taxation purposes on account of civil status or family responsibilities which it grants to its own individual residents.

(3) A corporation of one of the Contracting States, the capital of which is wholly or partly owned or controlled by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which a corporation of the first-mentioned Contracting State carrying on the same activities, the capital of which is wholly owned or controlled by one or more residents of the first-mentioned Contracting State, is or may be subjected.

(4) Except where the provisions of paragraph 1 of Article 10 (Related Persons), paragraph 5 of Article 12 (Interest), or paragraph 5 of Article 13 (Royalties) apply, interest, royalties, and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions (including rules governing the allowable debt to equity ratio) as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of a resident of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of the first-mentioned resident, be deductible under the same conditions (including rules governing the allowable debt to equity ratio) as if they had been contracted to a resident of the first-mentioned State.

(5) For the purposes of this Article, the Convention shall apply, notwithstanding the provisions of Article 2 (Taxes Covered), to taxes of every kind imposed by a Contracting State.

ARTICLE 25

MUTUAL AGREEMENT PROCEDURE

(1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he

may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24 (Non-discrimination), to that of the Contracting State of which he is a national. The case must be presented within three years of the first notification of that action. Where a combination of decisions or actions taken in both Contracting States results in taxation not in accordance with the provisions of the Convention, the three years begins to run only from the first notification of the most recent action or decision. (2) The competent authority shall endeavor, if the objection appears to it to be justified and it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the Contracting States.

(3) The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties arising as to the application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of this Article. When it seems advisable for the purpose of reaching agreement, the competent authorities may meet together for an oral exchange of opinions.

ARTICLE 26

EXCHANGE OF INFORMATION

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1 (Personal Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

(2) In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation—

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

(3) If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same manner and to the same extent as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, and writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of that other State with respect to its own taxes.

(4) The exchange of information shall be either on a routine basis or on request with reference to particular case. The competent authorities of the Contracting States may agree on the list of information which shall be furnished on a routine basis.

(5) The competent authorities of the Contracting States shall notify each other of the publication by their respective Contracting States of any material concerning the application of this Convention, whether in the form of legislation, regulations, rulings, or judicial decisions by transmitting in the ensuing calendar year the texts of any such materials adopted in the course of any given calendar year.

(6) For the purposes of this Article, the Convention shall apply, notwithstanding the provisions of Article 2 (Taxes Covered, to taxes of every kind imposed by a Contracting State.

ARTICLE 27

DIPLOMATIC AND CONSULAR OFFICERS

Nothing in this Convention shall affect the fiscal privileges of diplomatic and consular officials under the general rules of international law or under the provisions of special agreements.

ARTICLE 28

GENERAL RULES OF TAXATION

(1) A resident of one of the Contracting States may be taxed by the other Contracting State on any income from sources within that other Contracting State and only on such income, subject to any limitations set forth in this Convention. For this purpose, the rules set forth in Article 7 (Source of Income) shall be applied to determine the source of income.

(2) The provisions of this Convention shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded—

(a) by the laws of one of the Contracting States in the determination of the tax imposed by that Contracting State, or

(b) by any other agreement between the Contracting States.

(3) Notwithstanding any provisions of this Convention except paragraph (4), a Contracting State may tax a citizen or resident of that Contracting State as if this Convention had not come into effect. For this purpose the term "citizen" shall include a former citizen whose loss of citizenship had as one of the principal purposes the avoidance of tax but only for a period of ten years following such loss.

(4) The provisions of paragraph (3) shall not affect:

(a) the benefits conferred by a Contracting State under paragraph 3 of Article 10 (Related Persons), paragraph 3 of Article 21 (Private Pensions and Annuities), Articles 22 (Social Security Payments), 23 (Relief from Double Taxation), 24 (Non-discrimination), and 25 (Mutual Agreement Procedure); and

(b) The benefits conferred by a Contracting State under Articles 18 (Government Service), 19 (Students and Trainees), 20 (Teachers and Researchers), and 27 (Diplomatic and Consular Officers), upon individuals who are neither citizens of, nor have immigrant status in, that Contracting State.

(5) The competent authorities of the Contracting States may each prescribe regulations necessary to carry out the provisions of this Convention.

(6) Except as provided in paragraph 7, a person (other than an individual) which is a resident of a Contracting State shall not be entitled under this Convention to relief from taxation in the other Contracting State unless:

(a) more than 50 percent of the beneficial interest in such person (or in the case of a company, more than 50 percent of the number of shares of each class of the company's shares) is owned, directly or indirectly, by any combination of one or more of:

(i) individuals who are residents of the United States;

(ii) citizens of the United States;

(iii) individuals who are residents of Indonesia;

(iv) companies as described in paragraph (7)(a); and

(v) the Contracting States; and

(b) the income of such person is not used in substantial part, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons other than those enumerated in subparagraphs (a) (i) through (v).

(7) The provisions of paragraph (6) shall not apply if:

(a) the person is a company in whose principal class of shares there is substantial and regular trading on a recognized stock exchange; or

(b) the establishment, acquisition and maintenance of such person and the conduct of its operations did not have as a principal purpose the purpose of obtaining benefits under the Convention.

(8) For the purposes of paragraph (7)(a), the term "a recognized stock exchange" means:

(a) the NASDAQ System owned by the National Association of Securities Dealers, Inc., and any stock exchange registered

with the Securities and Exchange Commission as a national securities exchange for the purposes of the Securities Exchange Act of 1934; and

(b) the Jakarta stock exchange; and

(c) any other stock exchange agreed upon by the competent authorities of the Contracting States.

ARTICLE 29

ASSISTANCE IN COLLECTION

(1) Each of the Contracting States shall endeavor to collect on behalf of the other Contracting State such taxes imposed by that other Contracting State as will ensure that any exemption or reduced rate of tax granted under this Convention by that other Contracting State shall not be enjoyed by persons not entitled to such benefits. The competent authorities of the Contracting States may consult together for the purposes of giving effect to this Article.

(2) In no case shall this Article be construed so as to impose upon a Contracting State the obligation to carry out administrative measures at variance with the regulations and practices of either Contracting State or which would be contrary to the first-mentioned Contracting State's sovereignty, security, or public policy.

ARTICLE 30

ENTRY INTO FORCE

This Convention shall be subject to ratification and instruments of ratification shall be exchanged at Washington as soon as possible. It shall enter into force one month after the date of exchange of the instruments of ratification. The provisions shall for the first time have effect with respect to taxes withheld at source in accordance with Articles 11 (Dividends), 12 (Interest), and 13 (Royalties), for amounts paid or credited on or after the first day of the second month next following the date on which the Convention enters into force, and with respect to other taxes for calendar years or taxable years beginning on or after January 1 of the year in which this Convention enters into force.

ARTICLE 31

TERMINATION

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention at any time after 5 years from the date on which the Convention enters into force provided that at least 6 months' prior notice of termination has been given through diplomatic channels. In such event, the Convention shall cease to have force and effect as respects income of calendar years or taxable years beginning (or, in the case of taxes payable at the source, payment made on or after January 1 next following the expiration of the 6-month period.

DONE at Jakarta, in duplicate, in the English language, this 11th day of July, 1988.

For the Government of the United States of America:

GEORGE P. SHULTZ.

For the Government of the Republic of Indonesia:

ALI ALATAS.

PROTOCOL

At the moment of signing the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion, the undersigned have agreed upon the following understandings:

It is agreed that the provisions of this Convention do not prejudice the legal rights of residents of a Contracting State concerning the taxation by the other Contracting State of income from the operation of ships or aircraft in international traffic with respect to taxable years beginning before January 1 of the year in which this Convention enters into force.

Ad Article 5, paragraph 3

It is agreed that for purposes of this paragraph the term "permanent establishment" shall not be deemed to include the use of facilities or the maintenance of a stock of goods or merchandise belonging to the enterprise for the purpose of occasional delivery of such goods or merchandise.

Ad Article 11, paragraph 4

It is agreed that the tax on interest payments permitted by this paragraph will apply, in the case of the United States, to the excess, if any, of interest deducted in determining the profits of the permanent establishment over the actual payments of interest by the permanent establishment. A permanent establishment may deduct an allocable portion of the interest expense of the home office. Where that deduction exceeds the amount of interest actually paid by the permanent establishment, the excess deduction is treated as if it were remitted to the home office subject to the additional tax under this paragraph.

Done at Jakarta, in duplicate, in the English language, this 11th day of July, 1988.

For the Government of the United States of America:

GEORGE P. SHULTZ.

For the Government of the Republic of Indonesia:

ALI ALATAS.

DEPARTMENT OF STATE,
Washington, July 11, 1988.

His Excellency ALI ALATAS,
Minister of Foreign Affairs of Indonesia.

EXCELLENCY, I have the honor to refer to the Convention Between the Government of the United States of America and the Government of the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, which was signed today.

In signing this Convention, it is the understanding of the Government of the United States of America that:

The United States recognizes the archipelagic States principles as applied by Indonesia on the understanding that they are applied in accordance with the provisions of Part IV of the 1982 United Nations Convention on the Law of the Sea and that Indonesia respects international rights and obligations pertaining to transit of the Indonesian archipelagic waters in accordance with international law as reflected in that Part.

The confirmation of this understanding by the Government of the Republic of Indonesia will constitute the agreed interpretation of Article 3(1)(a) of the Convention.

Accept, Excellency, the renewed assurances of my highest consideration.

GEORGE P. SHULTZ.

REPUBLIC OF INDONESIA, CITY OF JAKARTA,
EMBASSY OF THE UNITED STATES OF AMERICA, *ss:*

I certify that this document is a true and faithful copy of the original and that it has been carefully examined by me, compared with the said original, and found to agree with it.

ANN SHERIDAN,
Consul of the
United States of America.

JULY 11, 1988.

MINISTER FOR FOREIGN AFFAIRS,
REPUBLIC OF INDONESIA,
Jakarta, July 11, 1988.

H.E. GEORGE P. SHULTZ,
Secretary of State of the United States of America.

EXCELLENCY, The Government of the Republic of Indonesia confirms the understanding of the Government of the United States of America that:

> In signing this Convention, it is the understanding of the Government of the United States of America that:
>
> The United States recognizes the archipelagic States principles as applied by Indonesia on the understanding that they are applied in accordance with the provisions of Part IV of the 1982 United Nations Convention on the Law of the Sea and that Indonesia respects international rights and obligations pertaining to the transit of the Indonesian archipelagic waters in accordance with international law as reflected in that Part.
>
> The confirmation of this understanding by the Government of the Republic of Indonesia will constitute the agreed interpretation of Article 3(1)(a) of the Convention,

constitutes the agreed interpretation of Article 3(1)(a) of the Convention.

Accept, Excellency the renewed assurances of my highest consideration.

ALI ALATAS.

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